

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 7, 2007 Session

**ROBERTSON COUNTY BOARD OF EDUCATION v. MARY JANE
REDMOND, ET AL.**

**Appeal from the Chancery Court for Robertson County
No. 19041 Laurence M. McMillan, Jr., Chancellor**

No. M2006-01019-COA-R3-CV - Filed April 30, 2008

The appellant was a guidance counselor who was transferred to a teaching position, and she filed a grievance under the locally negotiated agreement between the local board of education and the local education association. The only relief she requested in her grievance was reinstatement to a guidance counselor position. The Board opposed submission of the grievance to arbitration, and the trial court held that the director of schools' decision to transfer a teacher is not subject to binding arbitration under the agreement. Because the appellant has retired, we find this appeal is moot. Accordingly, we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Richard L. Colbert, Courtney L. Wilbert, Nashville, Tennessee, for the appellants Mary Jane Redmond and Robertson County Education Association.

Charles W. Cagle, Samuel L. Jackson, Nashville, Tennessee, for the appellee, Robertson County Board of Education.

OPINION

In May of 2005, Mary Jane Redmond was transferred from her position as a guidance counselor at East Robertson High School to a teaching position at Springfield High School by the director of schools with no loss of pay grade. Ms. Redmond filed a grievance challenging her transfer.

The grievance filed by Ms. Redmond and the procedure followed by the parties in dealing

with that grievance were based on provisions in a locally negotiated agreement (“Agreement”), as described in the Education Professional Negotiations Act, Tenn. Code Ann. § 49-5-601 *et seq.*, between the Robertson County Board of Education (“Board”) and the Robertson County Education Association (“RCEA”). The only relief requested in Ms. Redmond’s grievance was that she be transferred back to a guidance counselor position.

Article VII of the Agreement deals with the procedure for grievances¹ and explains the steps in the process, *i.e.*, that the grievant may take the grievance initially to the employee’s supervisor, then to the director of schools, then the Board, and ultimately to “final and binding arbitration.” Ms. Redmond’s grievance proceeded through the stages described in the Agreement through the Board. Not satisfied with the results at that stage, she sought final and binding arbitration, which was scheduled for February 28, 2006.

Prior to the date set for arbitration, on December 27, 2005, the Board filed an action for a Declaratory Judgment asking the court to find that arbitration is not available regarding a transfer decision since, under relevant statutes, the director of schools has authority to transfer teachers unfettered by the Agreement. Specifically, the Board asked the trial court to find that the grievance process and arbitration under the Agreement “can offer no relief in terms of whether Ms. Redmond should have been transferred to a teaching position; and that an arbitrator has no authority to order that Ms. Redmond be returned to position as a school counselor.” The complaint further asked the trial court to “declare that the defendant’s transfer to a teaching position is not subject to arbitration and that she be enjoined from submitting this case to arbitration.”

Ms. Redmond filed a counterclaim wherein she asked the trial court to reinstate her as a guidance counselor at East Robertson. The RCEA was allowed to intervene. After a hearing on the merits, the trial court granted the Board a permanent injunction enjoining arbitration of Ms. Redmond’s grievance² and a declaratory judgment that the underlying grievance may not be submitted to arbitration. Relying on prior opinions from this court, the trial court determined that there is no legal authority for an arbitrator to substitute his or her judgment for that of a director of schools regarding transfers and that provisions in locally negotiated agreements purporting to limit the director’s authority to make transfers are void. Ms. Redmond and the Association appealed.

At the time this appeal was orally argued, counsel and this court were aware that the Tennessee Supreme Court had granted permission to appeal in a case which involved issues similar to those presented herein and might, therefore, be relevant to the resolution of this case. The Court filed its opinion in that case, *Lawrence County Educ. Ass’n v. Lawrence County Bd. of Educ.*, 244 S.W.3d 302 (Tenn. 2007), on December 20, 2007. On January 30, 2008, the Court denied the

¹Inclusion of arbitration procedures in a locally negotiated agreement is authorized by Tenn. Code Ann. § 49-5-612(c).

²The Board had requested a temporary injunction stopping the arbitration, but the court advanced the trial on the merits with the application for injunctive relief, pursuant to Tenn. R. Civ. P. 65.04(7).

petition for rehearing that had been filed by the Education Association and the teacher/coach.³

Thereafter, the Board filed a motion to dismiss this appeal on the ground that it became moot when Ms. Redmond retired. In support, the Board showed that Ms. Redmond had submitted notice of her retirement from the Robertson County School System in October of 2007 and that the retirement became effective January 1, 2008. The Board asserted that, by her retirement, Ms. Redmond had forfeited the ability to make a claim to be reinstated as a guidance counselor. Since that was the only relief requested in her grievance, the Board argued that this lawsuit no longer involved a live controversy. RCEA opposes dismissal.⁴

A case will be considered moot if it no longer serves as a means to provide some sort of relief to the party who may prevail. *McCanless v. Klein*, 182 Tenn. 631, 188 S.W.2d 745, 747 (1945). The concept and its application have been explained thusly:

The requirements for litigation to continue are essentially the same as the requirements for litigation to begin. *Charter Lakeside Behavioral Health Sys. v. Tennessee Health Facilities Comm'n*, No. M1998-00985-COA-R3-CV, 2001 WL 72342, at *5 (Tenn. Ct. App. Jan 30, 2001) (No Tenn. R. App. P. 11 application filed). A case must remain justiciable through the entire course of litigation, including any appeal. *State v. Ely*, 48 S.W.3d 710, 716 n. 3 (Tenn. 2001); *Cashion v. Robertson*, 955 S.W.2d 60, 62-63 (Tenn. Ct. App. 1997). A case is not justiciable if it does not involve a genuine, continuing controversy requiring the adjudication of presently existing rights. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 193 (Tenn. 2000); *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d 615, 616 (Tenn. Ct. App. 1998).

A moot case is one that has lost its justiciability because it no longer involves a present, ongoing controversy. *McCanless v. Klein*, 182 Tenn. 631, 637, 188 S.W.2d 745, 747 (1945); *County of Shelby v. McWherter*, 936 S.W.2d 923, 931 (Tenn. Ct. App. 1996). A case will be considered moot if it no longer serves as a means to provide some sort of judicial relief to the prevailing party. *Knott v. Stewart County*, 185 Tenn. 623, 626, 207 S.W.2d 337, 338-39 (1948); *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d at 616. Determining whether a case is moot is a question of law. *Charter Lakeside Behavioral Health Sys. v. Tennessee Health Facilities Comm'n*, 2001 WL 72342, at *5; *Orlando Residence, Ltd. v. Nashville Lodging Co.*, No. M1999-00943-COA-R3-CV, 1999 WL 1040544, at *3 (Tenn. Ct. App. Nov. 17, 1999) (No Tenn. R. App. P. 11 application filed). Where a case on appeal is

³Justice Holder filed a separate order in which she dissented from the majority order, disagreeing with the majority's decision to address an issue not specifically raised by the appellee.

⁴The Association argues (1) the question of whether Ms. Redmond's grievance is moot is for the arbitrator to decide, not this court, and (2) even if Ms. Redmond's retirement deprived her of standing, it has independent standing. Having fully considered these arguments, we find them unpersuasive.

determined to be moot and does not fit into one of the recognized exceptions to the mootness doctrine, the appellate court will ordinarily vacate the judgment below and remand the case to the trial court with directions that it be dismissed. *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d at 617; *McIntyre v. Traugher*, 884 S.W.2d 134, 138 (Tenn. Ct. App.1994).

Alliance for Native American Indian Rights in Tenn., Inc. v. Nicely, 182 S.W.3d 333, 338 (Tenn. Ct. App. 2005).

Ms. Redmond's complaint was that she was transferred out of a counselor position and moved to a teaching position. In her grievance, beside the heading "Specific relief sought" she stated, "A high school counseling position preferably East Robertson High School." Further, in her answer and counterclaim, Ms. Redmond again made it clear that her complaint was that she was no longer in a counseling position.⁵ She no longer seeks any employment with the school system.

Based on her retirement, and the specific grievance she filed, Ms. Redmond has no presently existing rights, and this appeal no longer serves as a means to provide the relief she requested. Accordingly, we conclude that this appeal must be dismissed as moot. Additionally, on remand, the trial court shall enter an order dismissing the case.

Costs of this appeal are taxed equally, with half taxed to the appellants and half to the appellee.

PATRICIA J. COTTRELL, P.J., M.S.

⁵Apparently her transfer did not result in any decrease in pay. She did not seek any monetary compensation.